



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Councilmember Ash Kalra

**SUBJECT: RESOLUTION IN SUPPORT OF
AN AMENDMENT TO THE
UNITED STATES CONSTITUTION**

DATE: August 28, 2014

Approved

Date

8/28/14

RECOMMENDATION

Forward item for full Council discussion to adopt a resolution calling for an amendment to the Constitution of the United States.

BACKGROUND

Since the 2010 Supreme Court decision in the Citizen's United v. Federal Election Commission case, there has been a growing concern that corporations, special interest groups and lobbyists are leveraging power with the use of campaign donations and other methods of financial influence. All these actions have been labeled as free speech, protected under the first amendment. Under current law, corporations are be recognized at "people", vesting them with all Constitutional rights that are afforded to US citizens of natural, human birth and existence. Yet, corporations benefit from special advantages not afforded to human beings, such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets.

In late spring of 2013, the City Council adopted a resolution "calling for a constitutional amendment, declaring that the expenditure of money in campaigns is not protected 'speech' for First Amendment purposes, and that campaign contributions and expenditures may be limited and regulated by Congress, States and by implication, local governments." Although the Council action was an important step, it did not address corporate constitutional rights.

Most recently, the California State Legislature was able to add an advisory measure (Prop 49) to address the issue of corporate personhood at the State level. Although it is currently being held up in the courts, the City's resolution to support a Constitutional amendment would demonstrate a grass roots level of support for the statewide measure, and, ultimately, Federal action to amend the Constitution of the United States.

I ask that my Council colleagues on the Rules Committee allow for open discussion of the topic for the benefit of our constituents at an upcoming City Council meeting.

[PROPOSED] RESOLUTION ESTABLISHING AS A POSITION OF THE CITY OF SAN JOSE THAT ONLY HUMAN BEINGS HAVE CONSTITUTIONAL RIGHTS AND CALLING FOR A CONSTITUTIONAL AMENDMENT TO ESTABLISH THAT POSITION

WHEREAS, the United States Constitution and the Bill of Rights are intended to protect the rights of human beings; and

WHEREAS, corporations can and do make important contributions to our society, but are not human beings; and

WHEREAS, the traditional and necessary rights and powers of corporations, such as ownership of property, ability to enter into legal transactions, ability of many persons to act as one, and many others, are provided for by state law and do not require creation of corporate rights in the constitution; and

WHEREAS, United States Supreme Court Justice Hugo Black in a 1938 opinion stated, "I do not believe the word 'person' in the Fourteenth Amendment includes corporations"; and

WHEREAS, the opinion of the four dissenting U.S. Supreme Court justices in *Citizens United v. FEC* (2010) noted that corporations have special advantages not enjoyed by human beings, such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets; and

WHEREAS, corporations usually put profits for shareholders ahead of concerns for the greater good of society while individual shareholders as natural persons balance their narrow self-interest and broader public interest when making political decisions; and

WHEREAS, the Supreme Court's grant of constitutional rights to corporations has resulted in prohibition of routine inspections of corporate property without a warrant or prior permission, thus allowing companies to hide threats to public health and safety (*Marshall v. Barlow's*, 1978); and

WHEREAS, the Supreme Court's grant of constitutional rights to corporations resulted in the striking down of a state law requiring labeling of milk containing bovine growth hormone, despite that this substance has been banned in all 27 countries of the European Union, Canada, Australia and many other countries because of animal health concerns (*International Dairy Foods Assoc. v. Amestoy*, 1996); and

WHEREAS, the Supreme Court's grant of constitutional rights to corporations has resulted in the striking down of a state law banning cigarette advertising within 1,000 feet of a schoolyard (*Lorrillard v. Reilly*, 2001); and

WHEREAS, the Supreme Court's grant of constitutional rights to corporations has resulted in the striking down of a state law restricting corporate spending on ballot

initiatives and referenda (First National Bank v. Bellotti, 1978); and

WHEREAS, these are only a few of the many examples in which the will of the people has been frustrated by the Supreme Court's grant of constitutional rights to corporations; and

WHEREAS, addressing corporate constitutional rights is necessary to correct situations such as these; and

WHEREAS, eight states and approximately 311 local governments throughout our country have passed resolutions or ballot initiatives which call for a constitutional amendment establishing that corporations do not have constitutional rights;

NOW, THEREFORE, BE IT RESOLVED that it is the position of the CITY OF SAN JOSE that A CONSTITUTIONAL AMENDMENT IS NEEDED TO ESTABLISH THAT

The rights protected by the Constitution of the United States are the rights of natural persons only;

Artificial entities established by the laws of any State, the United States, or any foreign state shall have no rights uniquely granted by this Constitution and are subject to regulation by the People, through Federal, State, or local law;

The rights and privileges of artificial entities shall be determined by the People, through Federal, State, or local law, and shall not be construed to be inherent or inalienable, except where absolutely essential to the individual's exercise of association, religion, or other constitutionally-protected individual rights; and

BE IT FURTHER RESOLVED that the CITY OF SAN JOSE calls on other communities to join with us in this action by passing similar Resolutions.